Flambeau Airmold Corporation *and* Union of Needletrades, Industrial, and Textile Employees, AFL–CIO, CLC. Case 11–CA–17172

May 30, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On March 23, 1998, Administrative Law Judge George Carson II issued the attached decision. The General Counsel and the Respondent filed exceptions and supporting briefs, and the Respondent filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below, and to adopt the recommended Order as modified.

We affirm the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with the unit employees regarding their hours and working conditions; by making numerous unilateral changes in employees' terms and conditions of employment; by discharging, suspending, or warning employees pursuant to its enforcement of the unlawful unilaterally changed rules or processes; and by failing to notify and bargain with the Union regarding the effect on employees of its institution of a continuous shift operation. In adopting these findings, we clarify the judge's rationale for concluding that the Respondent's discharge of employee Thomas Ellis violated Section 8(a)(5). We also conclude, contrary to the judge, that the Respondent further violated Section 8(a)(5) by unilaterally changing the notice requirements for employees' obtaining approval of sick leave and vacation leave.

1. Regarding the Respondent's alleged unilateral change in its sick leave policy, the evidence shows that the Respondent's policy 204, effective January 1, 1995, provides that employees who are unable to work due to illness must give the Respondent "as much notice as possible" before the start of their shift that they will not be reporting for work. On May 2, 1996, the unit employees selected the Union as their collective-bargaining representative in a Board election.[1] Thereafter, on ~~February 7, 1997, the Respondent~~ posted a notice to employees regarding its sick leave policy. This notice informed employees that, effective immediately, the Respondent was requiring them to "provide advance notice of at least one hour when taking a sick day," or they would be subject to disciplinary action, "except in cases of an emergency."

Despite finding that the Respondent's amendment of its policy "constituted a unilateral change," the judge concluded that the new requirement did not involve a material, substantial, and significant change in the unit employees' terms and conditions of employment that violated the Act. He noted that there was no evidence that the Respondent had disciplined any employee based on this new requirement and that he could envison few instances, besides emergency situations that the Respondent had excepted from its new policy, in which employees could not report absences at least 1 hour in advance of their reporting time. The judge therefore concluded that the Respondent's modification of its sick leave policy did not violate the Act. We disagree.

It is well established that an employer is prohibited from making changes related to wages, hours, or terms and conditions of employment without first affording the employees' bargaining representative a reasonable and meaningful opportunity to discuss the proposed modifications.[2] This restriction on employers applies in this context where the Union won a Board election and the Respondent subsequently made unilateral changes while its election objections were pending. As the judge found, "an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not been made."[3]

The Board has also held that a unilateral change in a mandatory subject of bargaining is unlawful only if it is "material, substantial, and significant."[4] In *Kendall College of Art & Design*, 288 NLRB 1205, 1213 (1988), the Board found that unilateral changes in "sick leave and sick leave reporting procedures" violated Section 8(a)(5) of the Act. Contrary to the judge, we find that the Respondent's unilateral change regarding sick leave here was "material, substantial, and significant" as it required employees to make their decision an hour in advance as to whether they would be reporting for work or using sick leave, whereas previously they could wait until the time they normally departed for work before making this

[1] The Board subsequently overruled the Respondent's election objections and certified the Union on April 8, 1997. On November 7, 1997, the Board issued its decision, reported at 324 NLRB 1064, in the certification-testing proceeding, finding that the Respondent has violated Sec. 8(a)(5) and (1) by refusing to bargain with the Union. The United States Court of Appeals for the Fourth Circuit later enforced the Board's decision. 178 F.3d 705 (1999).

[2] *NLRB v. Katz*, 369 U.S. 736, 743 (1962).

[3] *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975).

[4] *Alamo Cement Co.,* 281 NLRB 737, 738 (1986).

choice.[5] Employees feeling ill may not know until the last moment whether they can withstand a full day of work. Moreover, minor illnesses, such as colds or allergies, that employees regularly incur would not likely qualify for the "emergency" exception that the Respondent permitted in its revised policy. Thus, the Respondent's policy change impaired the employees' discretion and ability to use their sick leave benefit as they saw fit. It is immaterial that the Respondent's change may not have been unreasonable or that the Respondent has not disciplined any employee for violating the new policy. The evidence that the Respondent threatened to impose discipline on employees who breached the new policy is sufficient, ipso facto, to show that the Respondent considered the issue to be significant and that the unit employees would think likewise knowing that infractions of the new rule could place their employment status in jeopardy.

For these reasons, we reverse the judge and find that the Respondent's unilateral change entailed a material, substantial, and material change in the employees' sick leave benefits for which the Respondent had a bargaining obligation. Accordingly, the Respondent violated Section 8(a)(5) and (1) by failing to bargain with the Union on this subject.[6]

2. Regarding the Respondent's alleged unilateral change in its vacation leave policy, the evidence shows that the Respondent's policy 205, effective January 1, 1995, states that employees are required to give 3 days' notice before taking vacation. Employee Pearl Carter testified that, contrary to this stated policy, the Respondent's practice was that employees could approach their supervisor as late as the day before taking a vacation day and the supervisor would approve the request. Indeed, Carter gave uncontroverted testimony that, before the May 1996 union election, she received approval for a vacation day with 1 day's advance notice. Employee Angie Newell corroborated Carter's testimony that 1 days' notice had been sufficient. Carter further testified that, in February 1997, after the Union won the election, the Respondent began enforcing the written policy requiring employees to provide 3 days' notice before taking vacation.

Here, aside from its policy 205, the Respondent presented no evidence that, before the advent of the Union, the practice in obtaining approval for taking vacation leave had been 3 days' notice. The only testimonial evidence on this subject demonstrated that the Respondent's practice had been to require only 1 day's notice until after the Union won the election. Thus, despite the Respondent's written policy requiring additional notice, the Respondent has not previously enforced this requirement on employees taking vacation leave. We therefore conclude, based on Carter's and Newell's undisputed testimony, that the Respondent's actual practice was for employees to give 1 day's notice to obtain approval for vacation leave.

As stated, the Respondent acted at its own peril in making unilateral changes, while its election objections were pending, without consulting the employees' elected bargaining representative. The Board has held that an employer's unilateral change in its vacation policy is a substantial and material change that constitutes an unlawful refusal to bargain.[7] Thus, we find that the Respondent committed an additional violation of Section 8(a)(5) by unilaterally changing the notice requirement for employees' taking vacation leave.

3. The judge found, and we agree, that the Respondent's unlawful unilateral changes during the pendency of its election objections also included the institution of a new requirement that employees leave their machines running during shift changes. Pursuant to this unlawfully imposed work rule, the Respondent issued disciplinary warnings to employees Ervan Bryant, Jonathan Harris, and Stanley Robinson and discharged employee Thomas Ellis, who had received prior warnings for job misconduct. The judge found that this discipline further violated Section 8(a)(5) of the Act.[8]

Regarding Ellis' discharge, the evidence shows that, before the Union won the election, machine operators had shut down their machines near the end of each shift. The machine operators on the next shift did paperwork for a brief period of 2 to 5 minutes and then restarted their machines. On September 12, after the election, the Respondent posted a notice that stated: "Machines should not be shut down during shift changes." Thereafter, on September 24, the Respondent terminated employee Ellis for "allow[ing his] machine to be shut down during shift change."

[5] See *Mitchellace, Inc.,* 321 NLRB 191, 193 at fn. 6 (1996), which sets forth cases in which the Board found, as here, that unilateral changes had material, substantial, and significant effects, as contrasted with other cases cited there in which the Board dismissed similar allegations of 8(a)(5) conduct for the reason the judge relied on.

[6] We modify the judge's remedy to require that the Respondent rescind the new practice of requiring employees to give at least 1-hour notice before their shift begins that they were requesting to use sick leave that day.

[7] See *Paramount Poultry*, 294 NLRB 867, 868–869 (1989); *Sewell-Allen Big Star,* 294 NLRB 312, 367 (1989), enfd. 943 F.2d 52 (6th Cir. 1991), cert. denied 504 U.S. 909 (1992).

[8] The Respondent has not excepted to the judge's finding that it unlawfully disciplined Bryant, Harris, and Robinson.

The Board held in *Great Western Produce*, 299 NLRB 1004, 1005 (1990), that the discipline or discharge of an employee violates Section 8(a)(5) if the employer has unlawfully implemented work rules or policies that were a factor in the discipline or discharge. Applying the principles of *Great Western Produce* to this case, we are satisfied that the new work requirement that the Respondent imposed on its machine operators was a factor in Ellis' discharge. Indeed, the Respondent specifically stated on Ellis' discharge form that it was discharging him for this reason. Although the Respondent now argues that it discharged Ellis under the old rule for failing to restart his machine in a timely manner, we reject that argument as the documentary evidence clearly shows that Ellis was disciplined for assertedly violating the new rule. We also note that, as the judge himself stated, the Respondent had not raised this contention to the judge and failed to present any evidence to support it. We therefore adopt the judge's finding that Respondent violated Section 8(a)(5) of the Act by discharging Ellis.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Flambeau Airmold Corporation, Weldon, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Refusing to bargain with Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC, by unilaterally instituting and enforcing new timeclock rules and enforcing previously unenforced timeclock rules; changing the job assignments of employees; eliminating all material handler positions, five maintenance helper positions, and its tool maker apprenticeship program; charging employees for safety equipment and increasing the cost of replacement timecards; requiring that machines not be shut down at shift change; more strictly enforcing its break policy; disciplining employees for contamination of regrind when no product is contaminated; disciplining machine operators for failure to properly complete paperwork associated with machine operation; requiring an employee, when questioned about a production matter, to give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in the work of that employee; increasing the amounts employees pay for health insurance; and changing its requirements for obtaining approval of sick leave and vacation leave. The appropriate bargaining unit is:

> All hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons, but excluding office clerical employees, administrative employees, professional and technical employees, temporary agency employees, and guards and supervisors as defined in the Act."

2. Substitute the following for paragraph 2(a).

"(a) Rescind the unilateral changes it has made in the terms and conditions of employment of unit employees by instituting and enforcing new timeclock rules and enforcing previously unenforced timeclock rules; changing the job assignments of employees; eliminating all material handler positions; five maintenance helper positions, and its tool maker apprenticeship program; charging employees for safety equipment and increase the cost of replacement timecards; requiring that machines not be shut down at shift change; more strictly enforcing its break policy; disciplining employees for contamination of regrind when no product is contaminated; disciplining machine operators for failure to properly complete paperwork associated with machine operation; requiring an employee, when questioned about a production matter, to give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in the work of that employee; increasing the amounts employees pay for health insurance; and changing its requirements for obtaining approval of sick leave and vacation leave."

3. Substitute the attached notice for that of the administrative judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT deal directly with our employees concerning their hours and working conditions.

WE WILL NOT refuse to bargain with Union of Needletrades, Industrial, and Textile Employees, AFL–CIO,

CLC, by unilaterally instituting and enforcing new timeclock rules and enforcing previously unenforced timeclock rules; changing your job assignments; eliminating all material handler positions, five maintenance helper positions, and our tool maker apprenticeship program; charging you for safety equipment and increasing the cost of replacement timecards; requiring that machines not be shut down at shift change; more strictly enforcing our break policy; disciplining you for contamination of regrind when no product is contaminated; disciplining machine operators for failure to properly complete paperwork associated with machine operation; requiring you, when questioned about a production matter, to give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in your work; increasing the amounts employees pay for health insurance; and changing our requirements for obtaining approval of sick leave and vacation leave. The appropriate bargaining unit is:

> All hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons, but excluding office clerical employees, administrative employees, professional and technical employees, temporary agency employees, and guards and supervisors as defined in the Act.

WE WILL NOT discharge you, suspend you, warn you, or otherwise change your terms and conditions of employment by making unlawful unilateral changes.

WE WILL NOT fail to give notice to, and bargain with, the Union regarding the effect on you of the institution of a continuous shift operation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unilateral changes that we have made in your terms and conditions of employment by instituting and enforcing new timeclock rules and enforcing previously unenforced timeclock rules; changing your job assignments; eliminating all material handler positions; five maintenance helper positions, and our tool maker apprenticeship program; charging you for safety equipment and increasing the cost of replacement timecards; requiring that machines not be shut down at shift change; more strictly enforcing our break policy; disciplining you for contamination of regrind when no product is contaminated; disciplining machine operators for failure to properly complete paperwork associated with machine operation; requiring you, when questioned about a production matter, to give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in your work; increasing the amounts you pay for health insurance; and changing our requirements for obtaining approval of sick leave and vacation leave.

WE WILL notify and give the Union an opportunity to bargain before making any change in your terms and conditions of employment.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discipline we issued to you pursuant to our unlawful unilateral changes and, within 3 days thereafter, WE WILL notify you in writing that this has been done and that the discipline will not be used against you in any way.

WE WILL, within 14 days from the date of this Order, offer Tony Clark and Stephanie Sledge full reinstatement to their former job assignments and Thomas Ellis and Parthenia Rhodes full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make whole Toney Clark, Rex Davis, Thomas Ellis, Parthenia Rhodes, and Virginia Vaughn for any loss of earnings and other benefits resulting from their discipline, less any net interim earnings, plus interest.

WE WILL reinstate all material handler positions, give maintenance helper positions, and the tool maker apprenticeship program.

WE WILL make whole all of you who were affected by the charges made for safety equipment and the increased cost of replacement timecards.

WE WILL make whole all of you who paid increased amounts for health insurance as a result of our increasing the amount of health insurance premiums that you paid.

FLAMBEAU AIRMOLD CORPORATION

Jasper C. Brown Jr. Esq., for the General Counsel.
Charles A. Edwards and *M. Todd Sullivan, Esqs.,* for the Respondent
Ms. Dean Vaughn, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Jackson, North Carolina, on December 15, 16, 17, and 18, 1997.[1] The consolidated complaint was issued on October 1, 1997.[2] The complaint alleges two independent viola-

[1] All dates are 1996 unless otherwise indicated.

[2] The charge in Case 11–CA–17172 was filed on August 30, 1996, and amended on November 1 and December 30, 1996. The charge in Case 11–CA–17385 was filed on February 20, 1997, and amended on May 16, 1997. The charge in Case 11–CA–17537 was filed on June 10, 1997, and amended on September 23, 1997.

tions of Section 8(a)(1) of the National Labor Relations Act and multiple violations of Section 8(a)(5) of the Act. Respondent's answer denies all violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Flambeau Airmold Corporation, a corporation, manufactures extruded plastic products at its facility in Weldon, North Carolina, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside the State of North Carolina. The Respondent admits, and I conclude and find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I conclude and find, that Union of Needletrades, Industrial, and Textile Employees, AFL–CIO, CLC (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondent, at its Weldon, North Carolina facility, employs approximately 180 hourly employees who are engaged in the production and shipping of extruded plastic products such as boxes for tool kits and hand and power tools. Respondent began operation of the Weldon facility in April 1994, after purchasing it from W. R. Grace which had been in the same business. Vice President and General Manager Bill Budzien has been in charge of the plant's operation since its acquisition by Respondent. In January 1995, Respondent published a handbook setting out Respondent's policies and practices. The handbook uses the term "associate" instead of employee. Budzien testified that W. R. Grace had numerous job classifications, and that Respondent has sought to designate its employees as production associates, production support associates, and warehouse associates. Despite the foregoing terminology, Respondent still communicates using the terms of the function employees perform. A September 1996 memorandum announcing the elimination of certain jobs refers to expediters, material handlers, and maintenance helpers.

Respondent's manufacturing process begins with a plastic resin, which is placed into a blender. The resin is mixed with color concentrate and that material is transferred by a vacuum loading system to a material hopper on the top of a blow molding machine. The resin is then fed from the material hopper into an extruder, which is essentially a heated barrel with a screw inside. As the screw turns, the plastic melts and is then extruded out of the barrel into an accumulator die-head. A plunger comes down through the die-head, forcing the molten plastic out through a diering which forms a cylinder of hot plastic. Two mold heads then close around this plastic cylinder, and air is forced inside the mold which pushes the molten plastic out against the insides of the mold. After a predetermined cycle, based on the wall thickness and the part weight, the blower cycle ends, and the mold heads open up. The part is surrounded by hot plastic, called flash, which is removed by hand. The flash is recycled by being placed in a grinder which grinds it up and feeds it back into the material hopper. This ground up material is called regrind. Unit employees operate the machinery involved in this process, trim the flash from the product and, depending upon the product, install latches and handles, pack and ship the finished product, and perform other functions related to the foregoing production process.

The Union conducted an organizational campaign among Respondent's employees in March and April, and the employees selected the Union as their collective-bargaining representative on May 2. Respondent filed objections to the election. The Board, in an unpublished Decision and Certification dated April 8, 1997, dismissed Respondent's objections and certified the Union. Respondent continued to refuse to recognize and bargain with the Union. The Union filed a charge, Case 11–CA–17591, on July 15, 1997, and an amended complaint was issued on September 8, 1997. Respondent's answer admitted that Respondent had refused to bargain, but attacked the validity of the certification. On a Motion for Summary Judgment, the Board concluded that Respondent had violated the Act by refusing to bargain with the Union since May 2. *Flambeau Airmold Corp.*, 324 NLRB 1065 (1997). That case is pending before the Court of Appeals for the Fourth Circuit. Respondent continues to maintain that the certification is invalid.

The certified unit is:

> All hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons, but excluding office clerical employees, administrative employees, professional and technical employees, temporary agency employees, and guards and supervisors as defined in the Act.

B. The 8(a)(1) Allegations

The complaint alleges that Respondent informed its employees that plant work rules would be more stringently enforced because employees engaged in union and protected concerted activities. On July 1, Respondent conducted a fire drill. Supervisors Ralph Coleman and Miranda Williams were calling roll to account for everyone. After one employee, Johnnie Allen, responded "present," to Coleman, Williams told the employees they had to speak up so they could be heard. Employee Verman Smith interrupted, asking how loud she, referring to Allen, had to speak. Coleman told Smith that they were engaged in a fire drill and needed to know who was present. As Smith began making a comment about Williams having already asked one time, General Foreman Randolph Edwards interrupted him, telling him to shut up. Smith was suspended for 1 day because of his conduct. Smith appealed his suspension to General Manager Budzien. On July 8, Smith met with Budzien who stressed the importance of maintaining order during a fire drill. Smith gave his version of the events, stating that he was particularly upset with Edwards telling him to shut up. Budzien indicated that he would look into that, and then stated that Flambeau was not a social club, that "there is a reason they call it work and when people come to work [they're] expected to be at work and do [their] jobs," he then stated, "Your quality and safety, it's

going to tighten up."[3] It is undisputed that the Union was not mentioned in any way during this conversation.

The foregoing incident was precipitated by Smith's gratuitous comment during role call at a fire drill. Rather than accept Coleman's admonition, Smith continued to speak. In Smith's discussion of this incident with Budzien, more than two months after the election, the Union was not mentioned. There is no evidence that Budzien's comment regarding tightening up on quality and safety related in any way to the employees' selection of the Union as their collective-bargaining representative. Thus, I find that the statement did not violate Section 8(a)(1) of the Act.

The complaint alleges that Respondent canvassed its employees concerning new work schedules and that this constituted an independent violation of Section 8(a)(1) of the Act. The complaint also alleges that, in doing so, Respondent bypassed the Union and dealt directly with employees. Respondent had, in 1995, considered instituting a continuous shift operation that was to be effective on January 1, 1996. This plan was not implemented. In March and April, Budzien testified that there was "enough going on" without implementing the continuous shift operation. Respondent also did not have sufficient orders to justify the increased production. Following the union's election victory on May 2, employees were requested to volunteer for a committee being formed in connection with implementation of the continuous shift operation. Respondent met with these employees "to address some other people issues," including childcare and working on Sundays. The shift schedule proposed in 1995 had provided that all employees work 12-hour shifts. That schedule was not implemented; it was modified. After May 2, Budzien and other management officials held meetings with the volunteer employee committee and presented and discussed a modified schedule. The modified schedule provided that persons designated as production support associates would work a 12-hour shift, as originally proposed; but the production associates who actually performed the production process would work only 8-hour shifts. This is the plan that was implemented on August 26. Budzien testified that "they [the employees] felt that [the] eight hour option would be preferable to the other options."

Respondent's employees, on May 2, selected the Union as their collective-bargaining representative. Thereafter, Respondent was not privileged to deal directly with them regarding their hours and terms and conditions of employment. Respondent's dealing directly with a committee of employees concerning the proposed work schedule for the continuous shift operation unlawfully bypassed the Union. In so doing, Respondent violated Section 8(a)(5) and (1) of the Act. *Harris-Teeter Super Markets*, 293 NLRB 743, 745 (1989), enfd. 901 F.2d 1130 (4th Cir. 1990).

[3] Budzien could not recollect that he used the words "tighten up" in that meeting. I find that he did, telling Smith that Respondent was going to tighten up on quality and safety. Smith began a sentence referring to breaks and cycle time, but he stopped and amended his testimony, testifying that Budzien referred to quality and safety.

C. The Unilateral Change Allegations

There is no contention that Respondent gave notice to the Union and afforded the Union an opportunity to bargain regarding any of the unilateral changes alleged in the complaint. Respondent has failed and refused to recognize the Union, contending that it was improperly certified. Regarding the alleged unilateral changes, Respondent's answer admits that it disciplined various employees, but denies that the discipline violated Section 8(a)(5) of the Act. The answer also admits making certain changes in employees' hours and working conditions, but asserts that some of these were de minimus, some were legally required, and others were justified by economic necessity. *Mike O'Connor Chevrolet*, 209 NLRB 701 (1974), holds that an employer, pending certification, acts at its peril in making unilateral changes, unless there are compelling economic considerations for doing so. Events such as "loss of significant contracts" or "supply shortages" do not constitute compelling economic considerations. *Monroe Mfg.*, 323 NLRB 24 (1997).

1. Timeclock policy and discipline

The complaint alleges that Respondent implemented a new timecard policy on August 21, and began disciplining employees for violation of that policy on September 16. In January 1995, Respondent published an employee handbook that set out various policies. Included among them was policy 109 regarding timecards and timeclocks. The policy directed that employees punch in and out no more than 6 minutes prior to, or after, their shift. The policy does not address the circumstance of an employee forgetting to punch in or out. When this policy was initially published, the employees were using paper timecards that were kept in a rack next to the timeclocks. Employees were not disciplined for violating the 6-minute limitation. Payroll clerk Lori Pepper confirmed that there was no discipline "because it was too administratively cumbersome to track it." If employees forgot to punch in or out, they would take their card to their supervisor who would manually record the time.

In March, prior to the May 2 representation election, Respondent introduced an electronic timekeeping system, and employees were issued plastic electronic cards, the same size as a credit card, which the electronic system scanned and recorded when employees punched in and out. Employees carried these cards with them. No change in Respondent's written policy was made. Employees were told, according to a script used by Pepper when she briefed the employees regarding the new system, that if they forgot or lost their card, thereby precluding scanning in and out, that they should notify their supervisor who would "let the payroll department know what time you should have punched in." No discipline was administered for violation of the 6-minute rule or forgetting one's timecard. According to Pepper, a grace period was effectuated at the time the electronic timecards were introduced. Respondent did not announce to its employees that they were being given a grace period or that Respondent intended to begin imposing discipline at some point in the future. Pepper did not specify whether the grace period related to forgetting one's card, failure to punch in or out, or the 6-minute rule. She also did not testify whether management, in March, set a specific date for termination of the

grace period.[4] The only written policy at that time was the unenforced 6-minute requirement. Thus, in March and continuing until August, the only change that had occurred was that employees were using plastic cards. As in the past, no discipline was issued for punching in more than 6 minutes before a shift began or more than 6 minutes after a shift ended. When employees forgot to punch in or out, or forgot their card thereby precluding scanning in or out, they went to their supervisor just as they had done prior to the introduction of the electronic timekeeping system.

On August 21, Respondent posted a notice acknowledging that "[i]n the past, supervisors would manually adjust the attendance reports for associates who forgot their time cards." Stating that this was happening too frequently, the notice went on to state that employees would have to have their timecard in order to work. If the timecard was forgotten, the employee would be sent home to get it, which, the notice acknowledged, "would likely result in an occurrence" under the Respondent's attendance policy. Progressive discipline, up to and including discharge, for forgetting to punch in or out was not mentioned. On September 26, Respondent posted another notice. This notice cited Respondent's records which reflected that since August 21, when the prior notice was posted, 20 associates had gone to work without punching in. The notice states:

> Effective immediately, any associate who begins work or leaves work without punching their time card will receive corrective action. Discipline issued will be verbal warning, written warning, suspension, or discharge depending on the associate's corrective action history.

The notice does not mention Respondent's previously unenforced limitation on punching in or out more than 6 minutes before or after a shift.

Although this notice is dated September 26, employee Carolyn Kee had received a verbal warning under Respondent's progressive discipline system for failing to punch in on September 9, and employee Shelia Moody had received a verbal warning for failure to punch in on September 17. After September 26, over 40 disciplinary actions were issued under Respondent's progressive discipline system. Employees Virginia Vaughn and Rex Davis were each suspended for 1 day.[5]

The foregoing facts establish that Respondent unilaterally changed the terms and conditions of employment of its employees. Respondent's timecard rule is silent regarding failure to punch in or out. Prior to August 21, employees were not disciplined for failure to punch in or out. The August 21 notice and credible employee testimony establish that employees who failed to punch in or out would notify the appropriate supervisor who would take the necessary action to correct the mistake. This is the very procedure that Pepper stated in March when briefing employees about the new electronic timekeeping system. Pepper acknowledged that the 6-minute rule had never been enforced. Employees were not advised at any time that Respondent intended to begin imposing discipline for violation of the 6-minute rule.[6] Respondent's September announcement of its determination to obtain compliance with the new timeclock policy by progressive discipline had a significant impact on employees' terms and conditions of employment. The creation of the previously nonexistent offense of forgetting to punch in or out constituted a unilateral change in violation of Section 8(a)(5) of the Act. Enforcement of the previously unenforced rule relating to punching in or out more than 6 minutes prior to or after a shift also constituted a unilateral change in violation of Section 8(a)(5) of the Act. *Hyatt Regency Memphis*, 296 NLRB 259, 263 (1989). Discipline administered pursuant to these unilateral changes a fortiori constituted a further violation of the Act.

2. Changes in job assignments

The complaint alleges that Respondent unilaterally changed the job assignments of four employees, three of whom testified. After a Respondent incurs a bargaining obligation, it is not privileged to unilaterally change employees' job assignments insofar as such a change affects an employee's working conditions. *Lawson Printers*, 271 NLRB 1279, 1285 (1984).

Although Respondent classifies all its production employees as production associates, employees continue to refer to their functional job titles, such as trimmer or machine operator. Several employee witnesses who trim and finish and can also operate machines referred to themselves as helpers. These employees performed both functions, trimming and also substituting for the regularly assigned machine operator for short periods when the operator took a break, or filling in when the operator was absent. Prior to May 2, these individuals had not been responsible for performing any machine paperwork when substituting for an operator.

In September, Pearl Carter and Bernice Bradley were called to Supervisor Gilbert Long's office where he showed them how to fill out machine paperwork. Thereafter, Carter was assigned to operate a machine for 1 day. Bradley was also assigned to operate a machine, but the record does not establish either the length or circumstances of her assignment. She did not testify. Carter denied that she had been assigned to operate a machine during the period after Flambeau acquired the facility, but she acknowledged having occasionally operated a machine when W. R. Grace was operating the facility. There is insufficient evidence to make any finding regarding Bradley. I find that the 1 day temporary assignment of Carter did not constitute a unilateral change in her job assignment. There is no evidence that she was disciplined for any action she performed as a machine operator. The 1-day temporary assignment did not alter her terms and conditions of employment.

Stephanie Sledge, prior to June, worked as a helper. In June, she was assigned to operate a machine, a task she has been continually assigned since that time. Her performance of these duties on a permanent basis did substantially alter her duties.

[4] Budzien did not address any of these matters in his testimony.

[5] The complaint alleges that Thomas Ellis was terminated for a timeclock violation on September 24. The discipline that led to his termination on that date related to a machine being shut down at shift change, not to the timeclock.

[6] The need for accurate time records for Federal and State agencies does not mandate discipline. No discipline was administered when Respondent's recordkeeping system was "too administratively cumbersome to track it."

From her testimony, it is clear that Sledge expected an increase in her wage after she was assigned to perform this work on a regular basis; however, the record does not establish a set wage rate for machine operators. Rather, wages are based on employee skill levels under a program implemented prior to the Union becoming the employees' collective-bargaining representative. Thus, although the permanent assignment of Sledge to machine operation constituted a unilateral change in her terms and conditions of employment, and, therefore, violated Section 8(a)(5) of the Act, no monetary remedy is involved.

Prior to September, Tony Clark had worked as a helper. Although he had given breaks and substituted for absent machine operators, he had never been assigned to operate a machine on a continuing basis. In September, Clark was permanently assigned as a machine operator. When giving breaks and substituting for operators, Clark had not been responsible for completing the paperwork associated with operating a machine. Shortly after being assigned as a machine operator, Clark was discharged for failure to properly complete paperwork associated with the operation of the machine he had been assigned to operate. The unilateral assignment of Clark to the position of machine operator adversely affected his tenure of employment and constituted a change in the terms and conditions of his employment in violation of Section 8(a)(5) of the Act. *Lawson Printers*, supra. The discipline he received for failure to properly complete paperwork not only constituted a change in his working conditions, but also, as hereinafter discussed, was administered pursuant to a unilateral change in Respondent's work rules. Respondent's unilateral assignment of Clark as a machine operator and discharge of Clark for failure to properly perform the paperwork associated with that assignment violated Section 8(a)(5) of the Act.

3. Elimination of positions and increased job duties

In September, Respondent eliminated all material handler positions and five maintenance helper positions. It also suspended its tool maker apprenticeship program, returning the two employees in this program to their previous positions. These changes were announced in an undated memorandum; however, testimony by employee Mike Smith, whose job as a material handler was eliminated, places the date as September 17. In that memorandum, Respondent cites the need to reduce costs as the reason for its action, citing a $100,000 loss in August. The memorandum notes that, with the elimination of the material handler position, expediters will "pick up the responsibility for requisitioning material and ordering color."

The complaint alleges the elimination of the foregoing positions as well as increased job duties in the positions of expediters, warehouse and production employees, and mechanics and electricians as violations of Section 8(a)(5) of the Act. The elimination of the positions, as established by the memorandum and testimony of Smith, clearly constituted a unilateral change in the job assignments of the affected employees and, therefore, violated the Act. The only increase in job duties noted in the memorandum is that expediters would be required to requisition material and order color. The General Counsel adduced no evidence regarding the difficulty of this task or the amount of time it took to perform. Pearl Carter testified that expediters also assumed the task of calibrating the blender, but the record is silent regarding the difficulty of, or time required for, this task. Although the elimination of these positions may have had an impact on some other employees, the record establishes neither the impact nor the specific employees, other than expediters, that were affected. Quite simply, there is no probative evidence on which I can make a finding that the elimination of these positions increased the job duties of warehouse and production employees and mechanics and electricians. Regarding the expediters, although the requisitioning of material, ordering color, and calibrating the blender constituted a unilateral change, no expediter testified as to the difficulty or time involved in these tasks. There is no evidence establishing whether this was a material, substantial, and significant change that violated Section 8(a)(5) of the Act, or a change "so minimal that the employees ought to be barely inconvenienced." *Murphy Oil USA*, 286 NLRB 1039, 1041 (1987). In the absence of evidence establishing that this was a material change, I find no violation as to the expediters. The unilateral elimination of the material handler positions and five maintenance helper positions, as well as the return of the two tool maker apprentices to their former positions, violated Section 8(a)(5) of the Act.

4. Charges for safety equipment and timecards

On June 27, Respondent posted a notice from Budzien that informed the employees that Respondent could not afford to be wasteful or careless, noting "once-worn earplugs scattered around the parking lot, perfectly good work gloves thrown in the dumpsters." The notice then states:

> The company cannot afford to endlessly supply these and other items when associates don't take some responsibility for the care and ownership of these as well. Therefore, these items will now be dispensed through a vending machine . . . . Associates can purchase these items anytime you need them.[7]

On February 24, 1997, Respondent increased the amount employees were charged for replacement electronic timecards from $2 to $10. Budzien testified that this action was taken after Respondent experienced "an explosion in people losing their time cards" which resulted in increased work for payroll clerk Pepper and cost to the company.

Prices charged to employees for cafeteria food and refreshments dispensed by vending machines inside the plant are mandatory subjects of bargaining. *Ford Motor Co. v. NLRB*, 441 U.S. 488 (1979). I find little or no difference in principle between those charges and charges for required safety equipment. Respondent was obligated to give notice to the Union and afford it opportunity to bargain before imposing the requirement that employees begin purchasing replacement safety equipment from Respondent's vending machine and before it quintupled the cost of replacement time cards. These unilateral changes violated Section 8(a)(5) of the Act.

[7] The memorandum also refers to knives, which are production equipment. The complaint alleges only the charge for safety equipment as a violation of the Act. General Counsel offered no amendment to the complaint. I make no finding regarding matters not alleged.

5. Alteration of machine speed (cycle times)

The complaint alleges that, in July, Respondent unilaterally increased the production speed of its machines. As already described, a machine's cycle time is determined by the wall thickness and the part weight of the box being produced by the machine. Budzien credibly testified that changes in cycle times are made pursuant to engineering change requests. Various employees testified to occasions when supervisors or an engineer adjusted the cycle time of the machines they were operating. Respondent produced documentary evidence reflecting that, between July 1996 and November 1997, Respondent made a total of 24 cycle changes. In 11 instances the cycle was speeded up, and in 13 instances it was slowed down. There is no evidence of an overall increase in the speed of machines. The record establishes, and I find, that the engineering adjustments made in the cycle times did not constitute a unilateral change in violation of Section 8(a)(5) of the Act.

6. Continuous operation of machines at shift change

The complaint alleges that, on or about September 12, Respondent unilaterally began requiring that employees continue the operation of machines during shift changes and, thereafter, disciplined employees for failure to follow this new requirement. Prior to May 2, and for some time thereafter, machine operators had shut down their machines near the end of each shift. The operator on the next shift was expected to start the machine promptly at the beginning of that shift. Multiple employee witnesses confirmed this practice. Indeed, Donald Williams on May 7, Tony Clark on May 9, Nancy Jones on August 16, and Donald Mallory on August 16, were all warned for not starting the machines they had been assigned at the start of the shift. If the operator on the prior shift had not shut the machine down, the machine would, of course, not require starting. Indeed, if the policy were to leave the machine running, the warning would be given to the individual who shut the machine down, which is what began happening in September. The May 7 warning to Clark specifically states that he "has to start the machine up on time during take over from the previous shift." On September 12, Respondent posted a notice stating, "Machines should not be shut down during shift changes." On September 15, Jonathan Harris was warned for shutting his machine off prior to the end of the shift. Thereafter, Ervan Bryant was warned on September 24 and Stanley Robinson was warned on September 29. Thomas Ellis, who had received prior warnings, was terminated on September 24. The specific offense for which Ellis was terminated was "allowed machine to be shut down during shift change." The document terminating him notes that the notice stating that machines not be shut down had been posted for 2 weeks.[8]

I do not credit Budzien's testimony that the "method of operation has always been to keep the machines constantly cycling." Nor do I accept his explanation that Respondent's September 12 notice, which states that this policy "hasn't been enforced as it should have been in the past," establishes that this was a preexisting policy. This testimony is at odds with the testimony of employees as well as the statements on discipline issued by Respondent's supervisors. Although Respondent may, verbally, have imposed this new requirement when the 7-day-a-week operation began on August 26, the first date established by the record is September 12, and the first warning for violation of this newly imposed job requirement was issued on September 15. Prior to September, as reflected by the warnings of May 7, 9, and August 16, employees were warned for not promptly starting their machines.

"Employee work rules and particularly those that can lead to disciplinary actions constitute mandatory subjects of bargaining." It is immaterial "whether the rule change is good, bad, or indifferent. Whether the rule change was intended to accomplish a worthwhile result is not relevant." *Randolph Children's Home*, 309 NLRB 341, 343 at fn. 3 (1992). The discipline of employees under the unilaterally changed policy requiring that machines be kept running continuously constituted a substantial change in their working conditions. I find the unilateral change and discipline administered to Harris, Bryant, and Robinson, and the discharge of Ellis for violation of this new and unilaterally imposed job requirement violated Section 8(a)(5) of the Act.

7. Break policy

The complaint alleges that Respondent, on or about August 15, began more strictly enforcing its break policy, and, pursuant to that unilateral change, disciplined employees Tony Clark and Parthenia Rhodes, both of whom were suspended pursuant to Respondent's progressive discipline system. A notice dated September 12 reminds all employees that breaks are from the time the employee leaves the work station until the time of return.

The September 12 notice reminding employees of Respondent's break policy notes that breaks start when the employee leaves the work station, not when the employee arrives at the lunch room or lights up a cigarette. Respondent's posting of this notice and the examples cited in it confirm the testimony of Rhodes that she and others did overstay breaks. The absence of any discipline to employees during this time period, with the exception of Rhodes and Clark, confirm that this practice was condoned. Rhodes credibly testified that, prior to receiving her warning, she had overstayed her break "many times," often smoking with a supervisor. She was warned on August 15 by Supervisor Miranda Williams for overstaying her break by 6 minutes. Williams also signed the warning issued to Clark who overstayed his break by 4 minutes. There is no evidence of any employee ever having been warned prior to August 15 for overstaying a break by 4 or 6 minutes. The only evidence of prior enforcement of Respondent's break policy was against Kent

[8] Ellis contended that the machine was shut down on the prior shift; however, he was not warned for starting the machine late under Respondent's prior practice. The shortest time stated as being late on any warning issued under the prior practice is 5 minutes after the shift began. A pretrial affidavit by Ellis indicates that Supervisor Williams passed his machine 3 minutes after the shift began. Respondent does not contend that Ellis would have been disciplined under the old rule. Even if Respondent were to assert that this was the case, it presented no evidence in support of such a contention. Williams did not testify. The form imposing discipline on Ellis confirms that the discipline was pursuant to the new rule.

Dickerson on March 19 when he received a single warning both for overstaying his lunchbreak by 15 minutes and, on the same day, being in the parking lot 10 to 15 minutes before the shift ended. Respondent did not present Williams as a witness. Respondent, by its unilateral change in more strictly enforcing its break policy, violated Section 8(a)(5) of the Act. By disciplining Rhodes and Clark pursuant to this unilateral change, Respondent also violated Section 8(a)(5) of the Act.

8. Contamination of materials

The complaint alleges that Respondent, on or about May 16, unilaterally began more strictly enforcing its policy regarding contamination of materials. Pursuant to this, 24 employees are alleged to have been unlawfully disciplined, including Thomas Ellis who was suspended. Of these 24 employees, 5 testified. One of the five employees who testified, Kenneth Gary, was warned on May 23 for producing product contaminated with metal. The warning reflects that Gary claimed that the problem occurred after he returned from lunchbreak. Gary did not testify about this warning, thus there is no evidence regarding exactly when he discovered the problem or how soon he brought it to the attention of supervision.

Thomas Ellis received two warnings in May. On May 17, Ellis needed to push some material further into the grinder so that it would be reground. He was unable to locate a plastic broom handle. In order to save time, he used a wooden broom handle. The handle got caught in the grinder. Ellis immediately stopped the machine. There is no evidence that any contaminated product was produced. On May 19, one of the protective gloves Ellis was wearing stuck to the flash and was accidentally introduced into the grinder which Ellis again stopped. There is no evidence that the resin was contaminated or that any defective product was produced. On May 19, Supervisor Theodore Hawkins issued two warnings to Ellis. The warning for the broom handle incident, designated as a first written warning, is dated May 17. The warning for the lost glove, dated May 19, is designated as a second written warning. Hawkins did not testify, thus there is no evidence, assuming he prepared the May 17 warning on that date, regarding why he did not issue it on May 17. On August 14, Ellis was warned for running contaminated minnow buckets. He testified that Supervisor Miranda Williams saw the buckets and stated that there "was too much [discoloration as a result of contaminant] in it," but that he did not stop the machine because she did not specifically tell him to do so.

Parthenia Rhodes and Ervan Bryan were both warned on July 9 for putting defective boxes into the regrind hopper without removing a cardboard insert from the box. This caused contaminated product to be run on the next shift. The machine had to be stopped and completely cleaned. Rhodes acknowledged that she and the operator were jointly responsible for assuring that all inserts were removed from boxes before they were thrown into the grinder since she would hand the box to the operator who would actually throw it into the grinder. The testimony of employee Angie Newell and the warnings issued to Ricky Davis and Tina Massenburg on March 5, for producing 104 warped boxes and to Alex Evans and Virginia Vaughn on March 12, for producing boxes with soft corners, all of which had to be scrapped, confirm Respondent's contention that when employees share responsibility, all are disciplined.

Michael Smith was warned on September 17. He testified that the machine he was operating began running contaminated product some 25 minutes after he began operating it, and he did not believe he was responsible. He did not place this comment on the warning he received. The warning reflects that, at the time he received the warning, Smith stated that "he was not the only one throwing bad parts in the grinder[;] he had to stop others." Smith, at the hearing, denied stating that he was throwing bad parts in the grinder.

The 19 warnings introduced into evidence without testimony reveal that eight employees, Marcellus Bryant, Larry Burgess, Sandra Garner, Douglas Jackson, Jimmie Jones, Sylvia Patterson, Sharon Underdue, and Hilda Wheeler were all warned after the lines on which they were working began producing contaminated product and investigation revealed that the regrind had been contaminated by introduction of some foreign object that had not been removed from defective boxes that had been placed into the grinder.

Eight employees were warned for contaminating regrind. Unlike those situations in which the grinder was immediately turned off, it appears from the warnings issued to Stacy Cooke, Victor Eaves, Susie Harris, Samuel Lyles, Robert Purnell, Stanley Robinson, Felicia Sykes, and William Walton, that the grinder had to be totally cleaned. The warnings to Cooke, Sykes, and Walton reflect that Cooke and Sykes each contaminated 175 pounds of regrind and that Walton contaminated 758 pounds of regrind. There is, however, no evidence that any contaminated product was produced.

The remaining three warnings do not specifically refer to regrind; however, in view of the nature of the incidents and the absence of any mention of contaminated product, I find that any contamination would have been of regrind only. Gloria Jones threw a box containing a plexiglass rod into the grinder, but she brought this to the attention of supervision "shortly after it happened." Mollie Mayo was warned for losing a knife. The warning does not state that it was ground up, but implies that it was. There is no mention of contaminated product. Harry Simone was warned for contaminated material, the material having been contaminated by a wooden stick. Insofar as there is no reference to contaminated product, it appears that this incident is similar to that involving Ellis.

Employee testimony and documentary evidence, such as the warnings issued to Stanley Boone on July 31, 1995, and Michael Lee on December 12, 1995, establish that employees have historically been disciplined for running contaminated product. Although several employees testified that, prior to May 2, warnings had not been given for producing contaminated product, no specifics were cited. When employees did cite specific instances, such as the occasion when Ervan Bryant's knife stuck to the flash that was thrown into the grinder, the machine was stopped and the contaminant was cleaned out. No contaminated product was run. Similarly, Angie Newell recalled an occasion when orange rags were accidentally placed in the grinder and the machine was cut off. The record does not establish that any contaminated product was actually produced. No discipline was issued.

Contamination most commonly occurs when a foreign substance is accidentally introduced into the grinder. A typical incident involves a trimmer throwing a defective box into the grinder without removing handles, metal latches, or cardboard inserts. There have also been occasions when the protective gloves that the trimmers wear or the knives that they use for trimming have stuck to the hot plastic flash surrounding the product, so that when the defective box is being thrown into the grinder, the glove or knife is accidentally thrown into the grinder. On these occasions, when the mistake is caught, the contaminated material is removed from the grinder. The contaminant, therefore, is not introduced into the blender, the resin is not contaminated, and no contaminated product is actually produced. When contaminated material is found in the grinder, it is referred to as contaminated regrind. Respondent became concerned about regrind in March. A notice was posted on March 26 stating that 25,000 pounds of contaminated regrind material was generated in the past month. The memorandum directs employees to immediately cut off the grinder if a contaminant is introduced into it. The amount of contaminated regrind increased to 40,000 pounds in April, improved to slightly above 25,000 pounds in May, and thereafter dropped to less than 10,000 pounds a month. Despite Respondent's March memorandum and the excessive regrind produced in April, there is no evidence of any employee having been warned prior to May 2 for contaminating the material in the grinder. Budzien testified that "mistakes are going to happen," and that, when the mistake is caught immediately so that the contaminant can be removed from the grinder, "it's not necessarily true in all cases that they would get a corrective action." This somewhat equivocal answer is belied by the record. There is no evidence that, prior to May 2, any employee was warned for contaminating regrind. Only when the contamination resulted in contaminated product were warnings issued.

In view of the foregoing, I find no violation with regard the issuance of warnings to employees who were warned for directly or indirectly producing defective product. Specifically, I find no violation with regard to the warnings issued to the eight employees who did not testify but whose discipline reflects that they were warned because of contaminated product. Nor do I find any violation of the Act with regard to the warnings issued to Kenneth Gary for running contaminated product, to Thomas Ellis for continuing to run defective minnow buckets, to Parthenia Rhodes and Ervan Bryant for introducing cardboard into the regrind, and to Michael Smith for running contaminated product.

Although Respondent was justifiably concerned with the amount of regrind being produced, as of May 2, Respondent had an obligation to give notice to, and bargain with, the Union before making a change in employees' working conditions. Prior to May 2, Respondent had not issued warning to employees for contaminating regrind, so long as the employee realized the regrind had become contaminated and shut off the grinder so that no product was contaminated. The issuance of warnings for contamination of regrind when the product was not affected constituted a unilateral change in violation of Section 8(a)(5) of the Act. The warnings issued to Stacy Cooke on July 16, Victor Eaves on September 20, Susie Harris on September 23, Samuel Lyles on October 15, Robert Purnell on October 10, Stanley Robinson on August 13, Felicia Sykes on July 16, and William Walton June 20 are specifically for contamination of regrind. I have found that the warnings issued to Gloria Jones on August 13, Mollie Mayo on June 25, and Harry Simone on May 16, none of which refer to the contamination of any product, were issued for contamination of regrind. The warnings issued to Thomas Ellis dated May 17 and 19, related only to contamination of regrind. I find the foregoing discipline which was issued pursuant to Respondent's unilateral change violated Section 8(a)(5) of the Act.

9. Packing defective materials

The complaint alleges that Respondent unilaterally changed its discipline policy regarding employee production and packing defective material by enforcing that policy more strictly. The complaint alleges some 29 instances of discipline issued pursuant to this alleged change resulting in the suspension of Robert Tippett, who did not testify, and the suspension and discharge of Parthenia Rhodes. As hereinafter discussed, the discipline issued to Parthenia Rhodes and Noleen Clayton, who is alleged as having been unlawfully warned, is considered in the paragraph regarding the allegation regarding data cards. Thus, in this allegation, I am considering 27 instances of discipline. Four employees testified regarding this allegation.

Vicki McWilliams and Delores Gray Parker both testified concerning warnings they received on July 17, for not properly monitoring the quality of the product on which they had worked resulting in half an order being returned by the customer. Rex Davis was also warned, but he did not testify. The product was returned because holes in the boxes had not been cleanly drilled. McWilliams testified that she had not been doing the drilling; however, she acknowledged that she had been responsible for packing the product with the defective holes. Parker admitted that she had also been involved in packing the product that the customer found to be defective. Respondent has never tolerated the packing of defective units as reflected by the warning to Tina Massenburg on March 6. Ricky Davis, who had produced the defective units that Massenburg packed, was also warned. Massenburg was warned for packing the defective units.

Glen James was warned on October 15 for running 60 warped postage meter boxes. He testified that, prior to May 2, he had run warped boxes without being warned; however, additional testimony established that, on the prior occasion, James was aware that there was a problem which was corrected with a machine adjustment. On that occasion, fewer than 20 boxes were produced and none were packed off as being good boxes.

Kenneth Gary was warned on February 11, 1997, for producing boxes with poor routes, poorly cut hinges, and improperly seated latches. Gary did not make a comment when given the warning. Although he admitted that he was responsible for making the routes and installing the hinges, he testified that he did not do so improperly, that the supervisor was wrong. The record reflects numerous warnings issued to employees for improperly finishing boxes, including the warnings issued to Veronica Ball and Ronnie Smith on July 26, 1994, and Kathy Davis and Jesse Morgan Jr., on February 21, 1995.

The remaining 22 instances of discipline, as reflected on the warnings, relate to improper trimming and finishing, drilling the wrong holes, and packing product that was defective. When the machine operator is responsible for the defect, both the operator and person who packs the defective product are warned, as reflected by the warning issued on August 7, to Theodore Porch for packing 76 pieces that were defective because they contained fold lines. The machine operator, Gregory Royster, was also warned for producing the defective pieces. Jonathan Harris, another machine operator, was warned on October 31, for producing over 48 units that were too heavy.

Documentary evidence establishes that Respondent, before May 2, warned employees for improperly trimming and finishing the product, drilling holes in the wrong places, and failing to assure that the product they packed for shipment met specifications. The record does not establish any unilateral change regarding the warning of employees with regard to the production and packing of defective material. This allegation shall be dismissed.

10. Failure to properly complete paperwork

The complaint alleges that, on or about July 18, Respondent unilaterally began disciplining employees for failure to properly compete paperwork associated with machine operation. Employees Verman Smith, Ervan Bryant, and Glen James testified that, prior to May 2, either the leadperson or supervisor would bring incomplete paperwork to the operator's attention and that no discipline was taken. This testimony is uncontradicted. There is no documentary evidence reflecting discipline for incomplete paperwork prior to May 2. On July 18, Respondent began issuing discipline for incomplete paperwork as established by the July 18 warning to Eddie Waters singed by Ronnie Davis and Randolph Edwards. Thereafter, Davis and Edwards issued warnings to John Mayle on July 19, Dorothy Jones on July 23, Glenda Epps on July 25, Ricky Handsome on October 2, and Tony Clark on October 2. The discipline issued to Clark resulted in his termination under the Respondent's progressive discipline system.[9]

Although Budzien testified that he was unaware of any employee who had failed to properly complete the paperwork associated with machine operation who had not been disciplined, the warnings that Respondent began issuing in July corroborate the testimony of the employees and refute any contention that discipline had been issued for failing to properly complete machine paperwork prior to July 18. The warning issued to Jones on July 23 notes that she was not completing her machine paper and that "[e]ach day her machine paper has to be corrected." The warning issued to Epps states that "[i]ncomplete completion of machine paperwork will no longer be tolerated." Respondent did not present either Davis or Edwards as witnesses. Respondent, on and after July 18, unilaterally altered the terms and conditions of employment of its employees by disciplining machine operators for failure to properly complete machine paperwork in violation of Section 8(a)(5) of the Act. Thus, the discipline issued pursuant to this unilateral change to Waters, Mayle, Jones, Epps, Handsome, and Clark, who were discharged, violated Section 8(a)(5) of the Act.

11. More strict enforcement of rules

In addition to the specific instances of discipline imposed pursuant to the unilateral changes already discussed, the complaint alleges that Respondent unilaterally changed its discipline policy by more strictly enforcing all work rules. The complaint lists some 41 instances of discipline, including three suspensions, as a result of this alleged unilateral change. There is no evidence regarding six of these instances of alleged unlawful discipline. There is no testimony or exhibit reflecting the warnings of Michael Lee on July 1, Michael Shipp on August 12 and 16, and Bruce Hill on August 17. There is no evidence of the offenses for which Ronnie Coleman was disciplined on July 13 and August 2, nor is there any evidence that he was suspended on August 2. Documentary evidence establishes that Ricky Davis was suspended on August 9, for failure to meet production standards, but Davis did not testify. General Counsel adduced testimonial evidence from Verman Smith who, as already discussed, was suspended for interrupting a fire drill, Tony Clark who, as already noted, was warned on May 9, for starting his machine late, Noleen Clayton, Connie Carter, and Ryland Cain.

Verman Smith was suspended on July 1, for interrupting the fire drill. After the drill, the employees returned to the plant. Supervisor Ralph Coleman told Smith that, if he again interrupted a fire drill, he would let Edwards deal with him. Near the end of the shift, Smith was summoned to Coleman's office. Coleman handed Smith a warning stating that he was suspended for 1 day. Smith stated that he thought their conversation after the fire drill had ended the matter, and Coleman replied that "things change." There is no evidence that this discipline for a onetime offense that related to a safety matter constituted a unilateral change or reflected a unilateral change in policy regarding the enforcement of all work rules.

Tony Clark was warned on May 7, for the late starting of the machine to which he had been assigned as a substitute operator. As noted above, prior to the unilaterally changed requirement that machines be kept running, other operators were also warned for the late starting of machines. No unilateral change is alleged in this regard. On August 2, Clark was observed by Budzien for a period of approximately 15 minutes "doing nothing." He was warned for wasting time. Although I find it incredible that Budzien would simply observe an employee do nothing for 15 minutes without speaking to him, the General Counsel has not established that Clark was warned pursuant to a unilateral change in rule enforcement. The record establishes, as reflected by the warning to Kent Dickerson, that employees who are observed wasting from 10 to 15 minutes of time are warned.

Noleen Clayton was warned on May 1, 1997, for not wearing her earplugs. She testified that she had not been wearing them because she had been in training; however, she acknowledged that she did not have them with her, she had left them in the rest room. Documentary evidence establishes that three other em-

[9] The complaint also alleges a warning to Ron Wilson on August 29 and a warning to Jimmy Wilson on August 30; however, those warnings relate to failure to follow proper production procedure, not completion of machine paperwork.

ployees were warned for failure to wear earplugs after May 2. There is no evidence that this safety rule was not continuously enforced. Furthermore, the warning of May 1, 1997, is not alleged in the complaint and no amendment was offered.

Connie Carter was warned on July 9. Carter testified that supervisor Louise Gregory claimed that she was not properly putting jobs on the indicator board, a claim she denied. The warning, however, states that three shipments in the past two weeks had been short, and directed that hardcopies be verified before a product was shipped. Carter testified that the other two warehouse associates, Ryland Cain and Anthony Ghee were also warned. Ghee's warning does not appear in the record. Discipline issued to Charles Harrison on August 31 and September 27, 1995, for misshipping United Parcel Service orders, and on February 16, for mishandling the pick up of a UPS order, confirm that Respondent consistently disciplined employees for shipping mistakes that had a direct effect on a customer.

Ryland Cain was warned on July 13, and over a year later, on November 5, 1997, for failure to transport finished products from the pack-off area to the warehouse in a timely manner. Regarding the first warning, Cain explained that employees from the production area would typically move a large amount of material into the pack-off area near the end of the shift. He testified that the situation was virtually the same ever since he began working in the warehouse in January. In October 1997, supervision directed the warehouse associate on each shift to remain in order to move all material from that shift into the warehouse. Cain testified that, after this, he would typically not get off work until 5:30 or 6 p.m. This is confirmed by the warning he received on November 5, 1997, which notes that the other associates are able to complete their work within 30 minutes of the end of their shifts, whereas Cain takes from 1 to 2 hours. The only warning alleged in the complaint is the warning of June 13. Accepting Cain's testimony, which I do, the warning was a one-time aberration since the pack-off area was often in disarray at the end of the shift. If I did not credit Cain, the warning was a one-time reaction to a one-time problem. In either case, the evidence does not establish a unilateral change in the enforcement of work rules. Although the evidence establishes a unilateral change in the hours of all warehouse associates as of October 1997, and Cain's warning on November 17, 1997, neither of these are alleged in the complaint. The General Counsel has offered no amendment to the complaint. I therefore make no finding regarding those matters.

The complaint specifically alleges various unilateral changes, including changes that affected only a very few employees. The General Counsel argues that the increase in the number of disciplinary actions issued after the election reflects a unilateral determination to more stringently enforce all work rules; however, a significant number of these disciplinary actions resulted from Respondent's unilateral changes, such as the change in the timeclock policy and discipline for contamination of regrind. I am mindful that Budzien did talk to Verman Smith regarding tightening up on safety and quality; however, I do not find his comments, made in the context of expressing concern regarding safety and quality after Smith's interference with a fire drill, to constitute announcement of a unilateral change. Respondent regularly disciplined employees for safety violations before the employees selected the Union as their collective-bargaining representative as reflected by the warnings to Gloria Bradley for failure to wear her earplugs, Donald Davis for failure to look before backing, Joyce Fleming for failure to follow established safety procedures, Barbara McAdams for failure to use a ladder, and Brian Seward for failure to lock a grinder before performing maintenance on it. Ten of the alleged unlawful warnings alleged in this paragraph reflect discipline for safety violations, including failure to wear earplugs. Similarly, as reflected by the contemporaneous warnings issued to Johnny Coggins and Mike Montford before May 2, Respondent has never tolerated personal confrontations between employees. Thus, the contemporaneous warnings issued to Shewanda Harvey and James Coates on August 21, after Harvey told Coates to "get out of [her] face" and Coates responded with a vulgarity, are consistent with Respondent's past practice. Other warnings included in this allegation resulted after employees threw good product into the grinder, threw material into the trash can rather than the grinder, and failed to meet various production standards. The General Counsel presented no testimonial evidence regarding these incidents. The General Counsel, as discussed above, has presented compelling evidence regarding various unilateral changes alleged in the complaint. In order to establish a 8(a)(5) violation, it is incumbent on the General Counsel to establish that the discipline alleged in this paragraph was administered pursuant to some unilateral change. If any discipline alleged as a violation in this paragraph of the complaint had been imposed pursuant to a previously unenforced rule, Respondent would have unilaterally changed employee working conditions. There is no evidence that Respondent, prior to May 2, did not discipline employees for safety violations, personal misconduct, or failure to meet production standards when it became aware of such violations. I find that there is insufficient evidence to establish that Respondent unilaterally changed its discipline policy by more strictly enforcing all work rules. This allegation shall, therefore, be dismissed.

12. Continuous shift operation

Respondent had considered implementing a continuous shift operation as of January 1, 1996. Respondent did not have sufficient orders to support such a change at that time, thus a continuous operation was not implemented. Following discussion of the impact of the work schedule with the employee committee, as discussed above, the schedule that had been planned in 1995 was modified. When the continuous operation was implemented on August 26, it altered the hours that employees worked. This constituted a change in employee hours and working conditions. The Union had a right to be notified and consulted regarding this change. The institution of the continuous shift operation without affording the Union the opportunity to bargain regarding its effect on unit employees violated Section 8(a)(5) of the Act. The 1997 cessation of the continuous shift operation is not alleged in the complaint.

13. Failure to read and satisfactorily answer questions about data cards

The complaint alleges that Respondent, on January 22, 1997, unilaterally imposed a new policy mandating discipline for failure to read and satisfactorily answer questions regarding

data cards. On January 22, Respondent received a complaint from a customer regarding a mixed shipment of socket wrench boxes. One of the boxes contained spaces for 124 socket wrench heads, the other had 144 spaces. Production manager Tom Thompson went to the machine, a twin mold machine, where these boxes were being produced and asked the two employees who were trimming the boxes if they knew which of the two boxes they were, respectively, working on. The employees who were trimming, Noleen Clayton and Parthenia Rhodes, both responded affirmatively. Clayton noted that her boxes, the box with 124 spaces, were being produced by the operator on her side of the line. Rhodes noted that the product she was receiving was being produced by the machine being operated by Bobby Birdsong. The machine producing the box with 124 spaces which Clayton was trimming was being operated by Ricky Hansen. Thompson was not satisfied with this explanation and demanded that Rhodes show him the data card. Rhodes showed him both data cards, stating, "This is the one that Noleen [Clayton] is doing, and this is the one that I am doing." Thompson stated, "That's not what I want." Despite Rhodes explanation, using the data card, Thompson stated that he expected her to read the data sheet, to which Rhodes replied, "I can read the data sheet." Thompson was accompanied by Supervisors Miranda Williams and Randy Williams. Supervisor Ronnie Davis was also present. Thompson was extremely agitated. At one point, Clayton requested that Thompson "calm down and keep your voice down and just tell us what you want." Thompson testified that neither employee was able to identify the product she was working on from the data card. I do not credit this uncorroborated testimony. Thompson directed that Clayton and Rhodes be disciplined. Rhodes noted receipt of the disciplinary form she received, which resulted in her termination, "under protest." Clayton acknowledged that she had not identified the product by reading the data card, but explained that she was not given enough time and was nervous because of Thompson's attitude.

Respondent has disciplined employees who have produced defective product and, thereafter, been unable to explain the data card, as reflected on the warnings issued to Johnnie Allen on July 26, 1994, and Mark Burfield on August 18, 1994. In both of those instances, the production of the defective product, i.e., drilling holes in the wrong places, was directly attributable to the employee's failure or inability to read the data card. There is no claim in the instant case that either Clayton or Rhodes produced a defective box.

At the hearing, Budzien testified that the employees were actually warned for intermixing the product in cartons and cartons on pallets after they were trimmed. I find no credible evidence that either Clayton or Rhodes was responsible for any such intermixing. If this had been true, I am satisfied that the deficiency of intermixing is what would have been cited in the warnings. Rhodes had not previously worked on the line that produced the box with 144 spaces. I do not credit Thompson's uncorroborated testimony which implied that Supervisor Miranda Williams, who supposedly located intermixed product at the line and in the warehouse, was able to attribute the intermixing to Clayton and Rhodes. Williams did not testify, and no contemporaneous document reflects that Clayton and Rhodes were responsible for intermixing product. I am satisfied that if Respondent had evidence that Clayton and Rhodes had improperly mixed the boxes, they would have been warned for that offense.

The credible testimony of Rhodes that she showed Thompson the data cards for the boxes on which she and Clayton, respectively, were working establishes that she did not exhibit inability to read the data card, the offense of which she was accused. Respondent's assertion that the employees were really warned for intermixing the boxes is not established and is incredible. Rhodes had never worked on the box holding 144 socket wrench heads and could not have been responsible for a shipment the customer had already received. Respondent issued numerous warnings for mispacking and misshipments. If the evidence in Respondent's possession revealed that either Clayton or Rhodes had improperly packed the boxes, or was doing so when Thompson and three other supervisors confronted them, I am satisfied that they would have been warned for that offense.

Although Clayton and Rhodes were unfairly warned, the issue before me is whether they were warned pursuant to a unilateral change. I find that they were. At no time prior to January 22 had any employee been questioned regarding data cards in the absence of some production deficiency on the part of that employee that related to the data card. Likewise, no employee had been disciplined for failure to respond in a manner that the supervisor considered satisfactory when there was no evidence of any deficiency in the work of the employee. Rhodes showed Thompson both cards, explaining, "This is the one that Noleen [Clayton] is doing, and this is the one that I am doing." It may well be that Thompson was so distraught by the complaint from a major customer that he was not fully cognizant of the response he had received. Thompson was agitated throughout the encounter, speaking loudly, and stating that the responses he received were not what he wanted to hear. The offense cited on the disciplinary actions was the alleged inability to read the data card; however, Rhodes had read the data card. Respondent, by Thompson's actions, imposed a job requirement that an employee, when questioned about a production matter, give a response that a supervisor deemed to be satisfactory notwithstanding the absence of any deficiency in the work of that employee. The only warnings previously issued regarding failure to properly read a data card was when there had been an effect on production, i.e., producing bad product by drilling holes in the wrong place. In addition to creating the offense of failing to respond to a supervisor's satisfaction in the absence of any deficiency in the employee's work, Respondent, by Thompson's actions, incorporated this newly created job requirement into its progressive disciplinary system, resulting in the warning of Clayton and termination of Rhodes. Respondent's unilateral imposition of this job requirement and contemporaneous administration of discipline pursuant to it constituted a unilateral change in the working conditions of the affected employees. Such a change violated Section 8(a)(5) of the Act, as did the discipline administered.

14. Enforcement of cleanup duties

The complaint alleges that, on or about April 14, 1997, Respondent unilaterally changed its disciplinary policy by more strictly enforcing cleanup/housekeeping duties. Carolyn Kee and Kenneth Gary were both warned on April 14 for failure to clean the production area. Kee's warning cites failure to dump trash cans and properly to dispose of boxes and cartons. Kee's duties also included helping to trim boxes on any line that needed assistance. On the day in question, her supervisor requested that she do this on line 14. She acknowledged that she never got back to her cleanup tasks because it was time to punch out. Gary's warning also cites failure to dump trash cans and properly to dispose of boxes. Gary testified that he placed the trash cans and boxes at the back door, that employees on the next shift actually disposed of them. Kee, who worked on the same shift, acknowledged that her duties included dumping the trash cans and breaking down the boxes and placing them on a pallet. There is insufficient evidence establishing the Respondent more strictly enforced cleanup duties. Kee acknowledged that she was unable to return to her cleanup tasks, and Gary's testimony that he was not expected to actually dump the trash cans is contradicted by Kee. In the absence of evidence establishing a unilateral change, the allegations relating to clean up shall be dismissed.

15. Christmas gifts

The record does not establish a past practice regarding gifts at Christmas. Respondent took over the facility from W. R. Grace in April 1994. That year, Respondent continued the practice of giving a $10 gift certificate for purchase of a ham or turkey at Thanksgiving. At Christmas there was a buffet dinner at the local civic center and a separate children's party. The Thanksgiving gift certificate was repeated in 1995, and a more elaborate celebration, including a dinner with drawings for various products and $10 gift certificates for each child under the age of 12. The record does not establish whether these certificates were given at the dinner or at a separate children's party. Nothing was provided in 1996. Budzien credibly testified that he was not in a position to request approval of the expense involved due to Respondent's significant losses in 1996. In these circumstances, I cannot find that Respondent, by its actions in 1994 and 1995, created a term and condition of employment regarding gifts at Thanksgiving and Christmas. The 1996 failure to give the gifts that were given in 1994 and 1995 did not constitute a unilateral change in employees' terms and conditions of employment. *Benchmark Industries*, 270 NLRB 22 (1984).

16. Increase in cost of medical insurance

On January 6, 1997, Respondent issued a memorandum announcing a health insurance premium increase to be effective February 2. Budzien testified that Respondent is self insured and that the Respondent's policy "is to try to maintain the associates' share in medical costs . . . . within a consistent range. . . so that if our medical insurance costs increase the associates' share in that will increase to maintain a consistent percentage of associate contributions." Contrary to Budzien's testimony, the record does not establish a policy of maintaining a "consistent percentage of associate contributions." A memorandum to employees dated January 6, 1997, signed by Respondent's president Jason C. Sauey states:

> Our history with health insurance claims over the past few years has caused the company's cost to increase dramatically. . . . [A]lthough the cost for insurance to the company has increased substantially, we have not increased the cost of participating associates' premiums in almost three years.

The record establishes, and I find that Respondent does not have a policy of automatically passing insurance cost increases on to employees pursuant to any fixed formula. In this case, as in *Garrett Flexible Products*, 276 NLRB 704 (1985), the Respondent has retained discretion in allocating premium increases. In the absence of an established past practice whereby increases were automatically passed on to employees, Respondent was obligated to give notice to the Union and to afford it an opportunity to bargain regarding the increases in premiums. It failed to do so, and, by failing to do so, violated Section 8(a)(5) of the Act.

17. Sick leave requirement of 1-hour notice

Respondent's policy 204, effective January 1, 1995, states that employees who cannot report to work due to illness provide "as much notice as possible" prior to the start of the shift except in case of emergency. In 1997, having experienced employees calling in as few as 5 or 10 minutes before the beginning of the shift, Respondent amended its policy by requiring that employees notify Respondent of their anticipated absence at least 1 hour before the beginning of the shift. There is no evidence that any employee was disciplined as a result of this revised requirement. The published policy exempts cases of emergency. I can imagine few circumstances, other than an emergency, when an employee who is able to report his or her anticipated absence 5 or 10 minutes before the shift begins would be unable to do so 1 hour before the shift begins. I find that although this amendment of policy constituted a unilateral change, it is not a material, substantial, and significant change in employees' terms and conditions of employment; and, therefore, it does not violate Section 8(a)(5) of the Act. *Mitchellace*, Inc., 321 NLRB 191, 193 fn. 6 (1996); *Murphy Oil USA*, 286 NLRB 1039 (1987).

18. Requirement that employees use accrued vacation at shutdown

The complaint alleges that, in July 1997, Respondent unilaterally altered its vacation policy by requiring employees to use accrued vacation during periods when the plant was shut down. Documentary evidence establishes that when the plant was shut down over Christmas in 1995, days that were not holidays were mandatory vacation days or a day without pay. Similarly, when the plant was shut down for 4 days over the July 4 weekend in 1996, Friday, July 5, was a mandatory vacation day. The same was true for days that were not holidays during Christmas 1996. Neither the July nor December 1996 shutdowns with mandatory vacation days are alleged as violations of the Act. In 1997, the plant was shut down from June 28 through July 5, the entire week of July 4. Employees eligible for more than 10 days of vacation were required to use available vacation days Monday

through Thursday. In view of Respondent's past practice, I find that the requirement that employees use available vacation days was not a unilateral change. The liberalization of the requirement so that employees eligible for less than 10 days could elect to take unpaid days was a unilateral change, but I do not find that it was significant enough to constitute a violation of Section 8(a)(5) of the Act. *Michellace Inc.*, supra.

19. Requirement that employees give 3 days' notice prior to vacation

The complaint alleges that in February 1997, Respondent unilaterally changed its requirement for obtaining approval for taking a vacation day. Employee Angie Newell testified that, prior to March 1996, she could obtain vacation by giving 1 day's notice and that this changed, but she did not testify as to when it changed. Employee Pearl Carter testified that in February 1997 the Respondent's policy of giving 1 day's notice prior to taking vacation changed, but she did not explain the circumstances under which she learned of this alleged change. Respondent's policy 205, effective January 1, 1995, clearly states that employees are required to give 3 days' notice prior to taking vacation. This allegation of the complaint shall be dismissed.

CONCLUSIONS OF LAW

1. By dealing directly with its employees regarding their hours and working conditions Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By making the unilateral changes in the terms and conditions of employment of its employees as set forth in this decision without giving notice to, and bargaining with, the Union, Respondent violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unilaterally instituted new timeclock rules and enforced previously unenforced rules and having disciplined employees pursuant to these changes, it shall be ordered to rescind the unilateral changes and to rescind all discipline issued pursuant thereto, including the suspensions of Virginia Vaughn and Rex Davis, and all discipline issued to the following employees and any employees similarly situated:

Dorothy Carter
Michelle Clay
Millard Cooke
Stacy Cooke
Rex Davis
Kent Dickinson
Genetha Epps
Alex Evans
Giovonnie Faulcon
Joyce Fleming
Wayne Garner
Connie Gary
Debra Glasgow
Thomas Gregory
Jonathan Harris II
Susie Harris
Shewanda Harvey
Minnie Hawkins
Joe Hefner
Terry Hicks
Douglas Jackson
Larry Jackson
Carolyn Kee
Bonita Long
Bobby Long
Herberteen McNair
Shelia Moody
Jesse Morgan
Tabby Peebles
David Price
Ben Richardson
Charlotte Simmons
Stephanie Sledge
John Smith
Michael Smith
Virginia Vaughn
Hilda Wheeler
Otto Wright
Aneshia Wynn

The Respondent having unilaterally changed the job assignment of Stephanie Sledge and having unilaterally changed the job assignment of, and discharged, Tony Clark, it shall be ordered to reinstate them to their previously assigned job tasks.

The Respondent having unilaterally eliminated all material handler positions, five maintenance helper positions, and its tool maker apprenticeship program, it shall be ordered to reinstate these positions.

The Respondent having unilaterally charged employees for safety equipment and having unilaterally increased the cost of replacement timecards, it shall be ordered to rescind those changes and to reimburse all employees who were affected by them.

The Respondent having unilaterally instituted a requirement that machines not be shut down at shift change and having disciplined employees for violation of this requirement, it shall be ordered to rescind this unilateral change and to rescind all discipline issued pursuant thereto, including the discharge of Thomas Ellis, and all discipline issued to Jonathan Harris, Ervan Bryant, Stanley Robinson, and any employees similarly situated.

The Respondent having unilaterally more strictly enforced its break policy and having disciplined employees pursuant to this unilateral change, it shall be ordered to rescind the unilateral change and to rescind all discipline issued pursuant thereto, including the discipline issued to Tony Clark and Parthenia Rhodes, who were suspended, and any employees similarly situated.

The Respondent having unilaterally instituted discipline for contamination of regrind when no product was contaminated, it shall be ordered to rescind this unilateral change and to rescind all discipline issued pursuant thereto, including the discipline issued to Stacy Cooke, Victor Eaves, Thomas Ellis, Susie Harris, Gloria Jones, Samuel Lyles, Mollie Mayo, Robert Purnell, Stanley Robinson, Harry Simone, Felicia Sykes, William Walton, and any employees similarly situated.

The Respondent having unilaterally instituted discipline for failure to properly complete paperwork associated with machine operation, it shall be ordered to rescind this unilateral change and to rescind all discipline issued pursuant thereto, including the discharge of Tony Clark and the discipline issued to Glenda Epps, Ricky Handsome, Dorothy Jones, John Mayle, Eddie Waters, and any employees similarly situated.

The Respondent having unilaterally instituted a job requirement that, when questioned about a production matter, an employee must give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in the work of that employee and having incorporated that requirement into

its progressive discipline system, it shall be ordered to rescind this unilaterally imposed requirement and to rescind the discipline issued to Noleen Clayton and the discharge of Parthenia Rhodes.

The Respondent having unilaterally increased the amount employees pay for health insurance, it must rescind this unilateral change, charge employees the same amount as it did prior to February 2, 1997, and make employees whole for the increased amounts that employees paid pursuant to this unilateral change, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent must make whole Tony Clark, Rex Davis, Thomas Ellis, Parthenia Rhodes, Virginia Vaughn, and any other employees that it suspended pursuant to discipline administered as a result of the unilateral changes found here, for any loss of earnings or other benefits, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent having unlawfully discharged Tony Clark, Thomas Ellis, and Parthenia Rhodes, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, supra.[10]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Flambeau Airmold Corporation, Weldon, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Dealing directly with its employees concerning their hours and working conditions.

(b) Refusing to bargain with Union of Needletrades, Industrial, and Textile Employees, AFL–CIO, CLC, by unilaterally instituting and enforcing new timeclock rules and enforcing previously unenforced timeclock rules; changing the job assignments of employees; eliminating all material handler positions, five maintenance helper positions, and its tool maker apprenticeship program; charging employees for safety equipment and increasing the cost of replacement time cards; requiring that machines not be shut down at shift change; more strictly enforcing its break policy; disciplining employees for contamination of regrind when no product is contaminated; disciplining machine operators for failure to properly complete paperwork associated with machine operation; requiring an employee, when questioned about a production matter, to give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in the work of that employee; and increasing the amounts employees pay for health insurance. The appropriate unit is:

> All hourly production associates, including maintenance associates, total shop associates, warehouse associates, quality assurance associates, secondary assembly associates, and leadpersons, but excluding office clerical employees, administrative employees, professional and technical employees, temporary agency employees, and guards and supervisors as defined in the Act.

(c) Discharging, suspending, warning, or otherwise changing the terms and conditions of employment of any unit employee pursuant to its unlawful unilateral changes.

(d) Failing to give notice to, and bargain with, the Union regarding the effect on employees of the institution of a continuous shift operation.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Rescind the unilateral changes it has made in the terms and conditions of employment of unit employees by instituting and enforcing new timeclock rules and enforcing previously unenforced timeclock rules; changing the job assignments of employees; eliminating all material handler positions, five maintenance helper positions, and its tool maker apprenticeship program; charging employees for safety equipment and increasing the cost of replacement timecards; requiring that machines not be shut down at shift change; more strictly enforcing its break policy; disciplining employees for contamination of regrind when no product is contaminated; disciplining machine operators for failure to properly complete paperwork associated with machine operation; requiring an employee, when questioned about a production matter, to give a response that a supervisor deems satisfactory notwithstanding the absence of any deficiency in the work of that employee; and increasing the amounts employees pay for health insurance.

(b) Notify and give the Union an opportunity to bargain before making any change in the terms and conditions of employment of unit employees.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline issued its employees pursuant to the unilateral changes found herein as set out in the remedy section of this decision and within 3 days thereafter notify those employees in writing that this has been done and that the discipline will not be used against them in any way.

(d) Within 14 days from the date of this Order, offer Tony Clark and Stephanie Sledge full reinstatement to their former job assignments, and offer Thomas Ellis and Parthenia Rhodes full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make whole Tony Clark, Rex Davis, Thomas Ellis, Parthenia Rhodes, and Virginia Vaughn, for any loss of earnings and other benefits suffered as a result of Respondent's

[10] Clark must be reinstated to his previous job assignment as a helper.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes

unlawful conduct, in the manner set forth in the remedy section of the decision.

(f) Reinstate all material handler positions, five maintenance helper positions, and the tool maker apprenticeship program.

(g) Make whole all employees affected by the charges made for safety equipment and the increased cost of replacement time cards as set forth in the remedy section of this decision.

(h) Make whole all employees affected by the increased amounts they paid for health insurance as set forth in the remedy section of this decision.

(i) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at its facility in Weldon, North Carolina, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2, 1996.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."